Zoning Board of Appeals October 4, 2012

## The Hall, 2<sup>nd</sup> Floor, Memorial Hall Library, 2 N. Main Street, Andover

Present were: Anderson (Chair); McDonough (Clerk); Jeton & Batchelder (Members), Baime (Associate Member)

The meeting opened at 7:03 p.m.

Petition No.: 4003

Premises affected: 209 North Main St

Petitioner: Andover Fit LLC

Members: Anderson (Chair); McDonough (Clerk); Jeton, Brown & Batchelder (Members), Baime (Associate Member)

Robert Lavoie, Esq., presented the petitioner's request to install a 200 sq. ft. attached sign. A variance is required from Section 5.2.10.1, 5.2.10.1.c &/or a special permit under Section 5.2.10.1, 5.2.10.1.C, 3.3.3. Planet Fitness is opening in the former Marshall's location of Shawsheen Plaza, located in the MU district. The proposed sign is typical of the plaza in that it exceeds the 80 sq. ft. maximum size, therefore relief is required. Two other tenants, Radio Shack & Stop & Shop, have internally illuminated signs. Petitioner has had the proposed sign reviewed by DRB, which recommends approval. The sign will cover approximately 10-15% of the façade and have goose neck lamps (external illumination). Two residents were present & commented on the potential for future illumination with 3D lettering & the shadow cast by goose neck lamps, suggesting that flat letters would be more legible. Scott Spaulding, of Viewpoint Sign & Awning, explained the letter design being only 5" deep mounted 2" off the façade to allow for drainage. It is possible to reduce the thickness to 2" & change the gooseneck lamps to reduce shadowing. The letters are solid & opaque. Anderson noted that the current plan is different than submitted with the application; therefore revised plans need to be submitted. Lavoie stated for the record that his client would agree to a condition of approval that future illumination is prohibited. Lavoie explained that the Marshall's sign was larger than the currently proposed sign & was removed less than two years, therefore a special permit would be appropriate & the ZBA has the ability to allow the alteration or enlargement of a pre-existing non-conforming structure. He was unable to locate any prior ZBA decisions related to Marshall's. Further, the Stop & Shop sign is larger. Planet Fitness' sign is longer. There were no other questions or comments from the Board or the public. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown noted that the absence of the Marshall's sign eliminates any pre-existing conditions rendering the petitioner ineligible for a special permit. Anderson asked for a motion to approve the variance to install the sing in accordance with the plans submitted and with the condition that the letters project no more than 3" from the façade; that gooseneck lighting is installed as to reduce shadowing; the sign shall never be internally illuminated; the revised plans, to include a compliance demonstration on the plan that the sign conforms to the 10% & if for any reason they run into any difficulty they will return to the zba to discuss it, be submitted prior to the expiration of the appeal period. Batchelder made the motion & McDonough seconded it. Brown added that the revised plans must show the area of the sign. Batchelder made the amended motion. McDonough seconded the motion & the Board voted (5-0) to grant the variance with conditions. Brown made a motion to deny the special permit as moot. McDonough seconded the motion & the Board voted (5-0) to deny the variance as moot. Brown will write the decision.

Petition No.: 4004

Premises affected: 17 Enfield Dr

Petitioner: Stephens

Members: Anderson (Chair); McDonough (Clerk); Jeton & Batchelder (Members), Baime (Associate Member)

Mark Ratté, builder, represented his clients. Member Brown disclosed that he has an ongoing business relationship with Joe Ratté, Mark's cousin, and recused himself from the hearing.

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Petitioner wishes to construct an addition to accommodate extended family living on site in order to care for family with health issues. The addition will conform to setbacks. A special permit is required to allow the family dwelling unit that will include a small kitchen on the 2<sup>nd</sup> floor. Ratté pointed out to the Board that the kitchen can and will be easily removed when it is no longer needed. The design is such that the units are not separated. There were no questions or comments from the public. McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Batchelder noted that the request for the family dwelling units fits the bylaw requirements & that the special permit should have the typical conditions & 5 yr validity. Anderson emphasized that the second kitchen can be removed. Batchelder made a motion to approve the special permit under section 3.1.3.F.4 to create the family dwelling unit. Baime seconded the motion & the Board voted (5-0) to approve the special permit. Anderson stated that it should be to the usual conditions including the 5 yr sunset. The Board voted to approve with conditions (5-0). Batchelder will write the decision. Anderson noted that the Board did not grant relief from the requested variance.

Petition No.: 4005

Premises affected: 91 Main St Petitioner: Mad Maggie's

Members: Anderson (Chair); McDonough (Clerk); Jeton, Brown & Batchelder (Members), Baime (Associate Member)

Steve & Maggie Reppucci, owners of Mad Maggie's Ice Cream, are requesting a special permit for a fast food restaurant that serves ice cream. The Board asked for delivery patterns & whether any ice cream will be produced on premise. Delivery of approximately 30 ice cream tubs will be made daily, in the early morning, by the owners' family. No ice cream will be produced on site. No one from the public had any questions or comments. Jeton made a motion to close the public hearing. Batchelder seconded the motion. The Board voted (5-0) to close the hearing. Batchelder volunteered to be an alternate & did not participate in the deliberation. The Board then proceeded to deliberate. McDonough made a motion to approve the special permit under section 3.1.3.C.12.b (fast food restaurant) in conformance with the plans submitted this evening. Brown seconded the motion & the board voted (5-0) to approve the special permit with conditions. Jeton will write the decision.

## **Approval of Minutes**

Brown made a motion to approve the minutes of 5-3-12. Batchelder seconded the motion & the Board voted (6-0) to approve the minutes of 5-3-12.

At 7:40 p.m. the Board concluded the public hearing portion of the public meeting.

Batchelder then made a motion to enter into executive session to discuss strategy with respect to pending litigation that is an appeal by the applicant Hanover RS to the Housing Appeals Committee concerning the denial of a comprehensive permit for a proposed 40B project at 30 Shattuck Road. Brown seconded the motion. For purposes of discussion, Chair Anderson then declared that having open meeting would have a detrimental effect on the litigating position of the Board and further stated that the subjects to be discussed during the executive session including the appeal, counsel on the appeal, the Notice of Mediation provided by the Housing Appeals Committee, and therefore the potential opportunity for solvent and other matters related to the strategy with respect to the defense of the Board's decision. The Clerk then took a role call:

Jeton – yes

Anderson – yes

Brown - yes

Baime - yes

McDonough did not participate on the 40B hearings and therefore left the remainder of the meeting. Town Counsel was present for the Executive Session.